

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

RODNEY FISHER, as the surviving son of )  
decedent CAROL ROBINSON, )

Plaintiff, )

v. )

Case No. 1:24-cv-00025-SNLJ

N & R OF NEW MADRID, LLC and )  
HEALTH SYSTEMS, INC., )

Defendants. )

**MEMORANDUM AND ORDER**

This matter is before the Court on Defendants N & R of New Madrid, LLC and Health Systems, Inc.'s Motion to Dismiss and Suggestions in Support (Doc. 22). Specifically, defendants seek dismissal due to plaintiff's failure to file an Affidavit of Merit pursuant to § 538.225 RSMo. The time for plaintiff to file a response has passed.

On February 12, 2024, plaintiff filed a Complaint alleging a wrongful death medical negligence claim against healthcare providers N & R of New Madrid, LLC and Health Systems, Inc. (Docs. 1, 22). Section 538.225.1 RSMo provides:

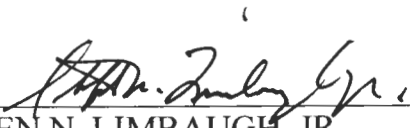
In any action against a health care provider for damages for personal injury or death on account of the rendering of or failure to render health care services, the plaintiff or the plaintiff's attorney shall file an affidavit with the court stating that he or she has obtained the written opinion of a legally qualified health care provider which states that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition.

Pursuant to subsection 5 of § 538.225, the affidavit “shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended for a period of time not to exceed an additional ninety days.” Here, more than ninety days have elapsed since the filing of the Complaint and plaintiff has not filed the required affidavits, nor made a timely request for an extension. As such, § 538.225 requires the dismissal of this action without prejudice. § 538.225.6 RSMo. (“If the plaintiff or his attorney fails to file such affidavit the court shall, upon motion of any party, dismiss the action against such moving party without prejudice.”); *Keating v. Smith*, 492 F. App’x 707 (8th Cir. 2012) (per curiam).

**ACCORDINGLY,**

**IT IS HEREBY ORDERED** that Defendants N & R of New Madrid, LLC and Health Systems, Inc.’s Motion to Dismiss and Suggestions in Support (Doc. 22) is **GRANTED**, and this action is **DISMISSED WITHOUT PREJUDICE**. The Clerk of Court is **DIRECTED** to close this case.

**SO ORDERED** on this 1st day of October, 2024.

  
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STEPHEN N. LIMBAUGH, JR.  
SENIOR UNITED STATES DISTRICT JUDGE